

1 **LAW OFFICES OF DALE K. GALIPO**

2 Dale K. Galipo, Esq. (Bar No. 144074)

3 dalekgalipo@yahoo.com

4 Hang D. Le, Esq. (Bar No. 293450)

5 hlee@galipolaw.com

6 21800 Burbank Boulevard, Suite 310

7 Woodland Hills, California, 91367

8 Telephone: (818) 347-3333

9 Facsimile: (818) 347-4118

10 Attorneys for Plaintiffs

11 JONATHAN WAYNE BOTTEN, SR.,

12 TANJA DUDEK-BOTTEN, ANNABELLE BOTTEN,

13 AND J.B.

14

15

16 **UNITED STATES DISTRICT COURT**

17 **CENTRAL DISTRICT OF CALIFORNIA**

18 JONATHAN WAYNE BOTTEN, SR.;

19 TANJA DUDEK-BOTTEN;

20 ANNABELLE BOTTEN; and J.B., a

21 minor, by and through his guardian

22 JONATHAN WAYNE BOTTEN, SR.,

23 Plaintiffs,

24 vs.

25 STATE OF CALIFORNIA; COUNTY

26 OF SAN BERNARDINO; ISAIAH

27 KEE; MICHAEL BLACKWOOD;

28 BERNARDO RUBALCAVA;

ROBERT VACCARI; JAKE ADAMS;

and DOES 1-10, inclusive,

Defendants.

**Case No. 5:23-cv-257**

**COMPLAINT FOR DAMAGES**

1. Fourth Amendment—Excessive Force (42 U.S.C. § 1983)
2. Substantive Due Process (42 U.S.C. § 1983)
3. Municipal Liability—Inadequate Training (42 U.S.C. § 1983)
4. Municipal Liability—Unconstitutional Custom, Practice, or Policy (42 U.S.C. § 1983)
5. Battery
6. Negligence
7. Negligent Infliction of Emotional Distress
8. Violation of Cal. Civil Code § 52.1

**DEMAND FOR JURY TRIAL**

## **COMPLAINT FOR DAMAGES**

JONATHAN WAYNE BOTTEN, SR., TANJA DUDEK-BOTTEN, ANNABELLE BOTTEN, and J.B., a minor by and through his legal guardian JONATHAN WAYNE BOTTEN, SR., for their Complaint against STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO, ISAIAH KEE, MICHAEL BLACKWOOD, BERNARDO RUBALCAVA, ROBERT VACCARI, JAKE ADAMS, and DOES 1-10, inclusive, allege as follows:

## **JURISDICTION AND VENUE**

9       1. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331  
10 and 1333(a)(3)-(4) because Plaintiffs assert claims arising under the laws of the  
11 United States including 42 U.S.C. § 1983 and the Fourth and Fourteenth  
12 Amendments of the United States Constitution. This Court has supplemental  
13 jurisdiction over Plaintiffs' claims arising under state law pursuant to 28 U.S.C. §  
14 1333(a), because those claims are so related to the federal claims that they form part  
15 of the same case or controversy under Article III of the United States Constitution.

16       2.     Venue is proper in this Court under 28 U.S.C. § 1331(b) because  
17 Defendants reside in this district and all incidents, events, and occurrences giving  
18 rise to this action occurred in this district.

## INTRODUCTION

20       3. This civil rights and state tort action seeks compensatory and punitive  
21 damages from Defendants for violating various rights under the United States  
22 Constitution and state law in connection with the officer-involved shooting of  
23 Plaintiffs JONATHAN WAYNE BOTTEN, SR., TANJA DUDEK-BOTTEN, and  
24 J.B. on February 17, 2021.

25 | //

26 | //

27 | //

## PARTIES

2       4. At all relevant times, Plaintiff JONATHAN WAYNE BOTTEN, SR.  
3 (“JONATHAN”) was an individual residing in the City of Hesperia in the County of  
4 San Bernardino, California.

5       5. At all relevant times, Plaintiff TANJA DUDEK-BOTTEN (“TANJA”)  
6 was an individual residing in the City of Hesperia in the County of San Bernardino,  
7 California.

8       6. At all relevant times, Plaintiff ANNABELLE BOTTON  
9 (“ANNABELLE”) was an individual residing in the City of Hesperia in the County  
10 of San Bernardino, California.

11       7. At all relevant times, Plaintiff J.B. (“J.B.”), a minor, was an individual  
12 residing in the City of Hesperia in the County of San Bernardino, California.

13        8. At all relevant times, Defendant STATE OF CALIFORNIA  
14 (“STATE”) is and was a duly organized public entity existing under the laws of the  
15 State of California. STATE is responsible for the actions, omissions, policies,  
16 procedures, practices and customs of its various agents and agencies, including the  
17 California Highway Patrol (“CHP”) and its agents and employees. At all relevant  
18 times, Defendant STATE is and was responsible for assuring that the actions,  
19 omissions, policies, procedures, practices, and customs of the and its employees and  
20 agents complied with the laws of the United States and of the State of California.

21       9. At all relevant times, Defendant COUNTY OF SAN BERNARDINO  
22 (“COUNTY”) is and was a duly organized public entity existing under the laws of  
23 the State of California. COUNTY is responsible for the actions, omissions, policies,  
24 procedures, practices and customs of its various agents and agencies, including the  
25 San Bernardino Sheriff’s Department (“SBSD”) and its agents and employees. At all  
26 relevant times, Defendant COUNTY is and was responsible for assuring that the  
27 actions, omissions, policies, procedures, practices, and customs of the and its

1 employees and agents complied with the laws of the United States and of the State  
2 of California.

3       10. At all relevant times, Defendants ISAIAH KEE (“KEE”), MICHAEL  
4 BLACKWOOD (“BLACKWOOD”), and BERNARDO RUBALCAVA  
5 (“RUBALCAVA”) (collectively “OFFICER DEFENDANTS”) were duly appointed  
6 by STATE as CHP officers and employees or agents of STATE, subject to oversight  
7 and supervision by STATE’s elected and non-elected officials. KEE,  
8 BLACKWOOD, and RUBALCAVA acted under color of law, to wit, under the  
9 color of the statutes, ordinances, regulations, policies, customs, and usages of  
10 defendant STATE and the CHP, and under the color of the statutes and regulations  
11 of the State of California.

12       11. At all relevant times, Defendants ROBERT VACCARI (“VACCARI”)  
13 and JAKE ADAMS (“ADAMS”) (collectively “DEPUTY DEFENDANTS”) were  
14 duly appointed by COUNTY as SBSD deputies and employees or agents of  
15 COUNTY, subject to oversight and supervision by COUNTY’s elected and non-  
16 elected officials. VACCARI and ADAMS acted under color of law, to wit, under the  
17 color of the statutes, ordinances, regulations, policies, customs, and usages of  
18 defendant COUNTY and the SBSD, and under the color of the statutes and  
19 regulations of the State of California.

20       12. At all relevant times, Defendants DOES 1-3 (“DOE OFFICERS”) were  
21 duly appointed by STATE as CHP officers and employees or agents of STATE,  
22 subject to oversight and supervision by STATE’s elected and non-elected officials.  
23 DOES 1-3 acted under color of law, to wit, under the color of the statutes,  
24 ordinances, regulations, policies, customs, and usages of defendant STATE and the  
25 CHP, and under the color of the statutes and regulations of the State of California.

26       13. At all relevant times, Defendants DOES 4-6 (“DOE DEPUTIES”) were  
27 duly appointed by COUNTY as SBSD deputies and employees or agents of  
28 COUNTY, subject to oversight and supervision by COUNTY’s elected and non-

1 elected officials. DOES 4-6 acted under color of law, to wit, under the color of the  
2 statutes, ordinances, regulations, policies, customs, and usages of defendant  
3 COUNTY and the SBSD, and under the color of the statutes and regulations of the  
4 State of California.

5       14. At all relevant times, Defendants DOES 7-8 are managerial,  
6 supervisorial, and policymaking employees of the CHP, who were acting under  
7 color of law within the course and scope of their duties as managerial, supervisorial,  
8 and policymaking employees for the CHP. DOES 7-8 were acting with the  
9 complete authority and ratification of their principal, Defendant STATE.

10      15. At all relevant times, Defendants DOES 9-10 are managerial,  
11 supervisorial, and policymaking employees of the SBSD, who were acting under  
12 color of law within the course and scope of their duties as managerial, supervisorial,  
13 and policymaking employees for the SBSD. DOES 9-10 were acting with the  
14 complete authority and ratification of their principal, Defendant COUNTY.

15      16. KEE, BLACKWOOD, RUBALCAVA, VACCARI, ADAMS, and  
16 DOES 1-10 are sued in their individual capacities.

17      17. In doing the acts and failing and omitting to act as hereinafter  
18 described, KEE, BLACKWOOD, RUBALCAVA, and DOE OFFICERS were  
19 acting on the implied and actual permission and consent of Defendant STATE.

20      18. In doing the acts and failing and omitting to act as hereinafter  
21 described, VACCARI, ADAMS, and DOE DEPUTIES were acting on the implied  
22 and actual permission and consent of Defendant COUNTY.

23      19. The true names and capacities of DOES 1-10 are unknown to Plaintiffs,  
24 who otherwise sue these Defendants by such fictitious names. Plaintiffs will seek  
25 leave to amend this Complaint to show the true names and capacities of the  
26 Defendants when they have been ascertained. Each of the fictitiously named  
27 Defendants is responsible in some manner for the conduct or liabilities alleged  
28 herein.

1       20. At all times mentioned herein, each and every defendant was the agent  
2 of each and every other defendant and had the legal duty to oversee and supervise  
3 the hiring, conduct, and employment of each and every defendant.

4       21. All of the acts complained of herein by Plaintiffs against Defendants  
5 were done and performed by said Defendants by and through their authorized  
6 agents, servants, and/or employees, all of whom at all relevant times herein were  
7 acting within the course, purpose, and scope of said agency, service, and/or  
8 employment capacity. Moreover, Defendants and their agents ratified all of the acts  
9 complained of herein.

10      22. On or around April 6, 2021, Plaintiffs filed comprehensive and timely  
11 claims for damages with the State of California pursuant to the applicable sections  
12 of the California Government Code. Over forty-five days have passed without a  
13 final disposition on these claims.

14      23. On or around April 6, 2021, Plaintiffs filed comprehensive and timely  
15 claims for damages with the County of San Bernardino pursuant to the applicable  
16 sections of the California Government Code. These claims were rejected on May 21,  
17 2021.

18                   **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

19      24. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1  
20 through 23 of this Complaint with the same force and effect as if fully set forth  
21 herein.

22      25. This incident occurred on February 17, 2021 at approximately 3:00  
23 a.m. near 17994 Catalpa Street in Hesperia, California (“BOTTEN RESIDENCE”).  
24 Plaintiffs were asleep inside the BOTTEN RESIDENCE in their respective beds  
25 when Plaintiff TANJA heard sirens near their residence and woke Plaintiff  
26 JONATHAN up. JONATHAN looked outside one of the windows of the BOTTEN  
27 RESIDENCE and observed law enforcement try to intercept a vehicle, ultimately  
28

1 resulting in the vehicle becoming disabled due to a spike strip across the street from  
2 the BOTTON RESIDENCE. JONATHAN and TANJA then went back to sleep.

3       26. At approximately 3:35 a.m., Plaintiff TANJA awoke again to the sound  
4 of sirens and a helicopter outside the BOTTON RESIDENCE. TANJA woke  
5 JONATHAN up again and JONATHAN looked outside and observed an incident  
6 taking place in front of his house. At around this time, TANJA woke her daughter  
7 ANNABELLE and son J.B. up and gathered them in the kitchen area. JONATHAN  
8 stood in front of the front doorway and took a video of what appeared to be a  
9 passenger of a vehicle with hands up being ordered to walk backwards. After  
10 JONATHAN took the video, he went back inside his house to get ready for work.

11       27. At approximately 4:20 a.m., TANJA informed JONATHAN that it  
12 appeared the driver of the vehicle, later identified as Hector Puga ("PUGA"), was  
13 getting out of the vehicle. JONATHAN went to the doorway to observe. TANJA  
14 and J.B. stood behind JONATHAN observing the incident as well. ANNABELLE  
15 was in the kitchen of the BOTTON RESIDENCE. At around this time, Plaintiffs  
16 heard shots and saw a spark hit their metal screen door as OFFICER  
17 DEFENDANTS and DEPUTY DEFENDANTS shot at PUGA in the direction of  
18 the BOTTON RESIDENCE. Based on JONATHAN's observations, it appeared that  
19 PUGA did not have a gun immediately prior to or during the shooting.

20       28. Due to the presence of the officers surrounding the BOTTON  
21 RESIDENCE and shots by OFFICER DEFENDANTS and DEPUTY  
22 DEFENDANTS towards and into the BOTTON RESIDENCE, OFFICER  
23 DEFENDANTS and DEPUTY DEFENDANTS restrained JONATHAN, TANJA,  
24 ANNABELLE, and J.B.'s liberty to leave their home. At the time of the shooting,  
25 JONATHAN, TANJA, ANNABELLE, and J.B. were confined to their home  
26 because of OFFICER DEFENDANTS and DEPUTY DEFENDANTS' show of  
27 authority.

28

1       29. JONATHAN fell back and heard TANJA scream that she had been shot  
2 in the face. Both ANNABELLE and J.B. also observed their mother scream that she  
3 had been shot. TANJA was bleeding from her face. TANJA had sustained gunshot  
4 wounds to her chin and chest. In order to get medical assistance for his wife's  
5 injuries, JONATHAN exited the BOTTON RESIDENCE for help, yelling that his  
6 wife had been shot. Based on the officers' shots toward the BOTTON RESIDENCE  
7 and the officers' active efforts to apprehend PUGA, JONATHAN, TANJA,  
8 ANNABELLE, and J.B. did not feel free to leave the premises.

9       30. OFFICER DEFENDANTS and DEPUTY DEFENDANTS approached  
10 the family. Based on OFFICER DEFENDANTS and DEPUTY DEFENDANTS'  
11 approach and presence, JONATHAN, TANJA, ANNABELLE, and J.B. believed  
12 that they were not free to leave. OFFICER DEFENDANTS and DEPUTY  
13 DEFENDANTS directed TANJA onto a bench outside BOTTON RESIDENCE, to  
14 which she complied. At around this time, J.B. exited the house holding his side  
15 while stating that he could not breathe. J.B. had sustained gunshot wounds to his  
16 chest and ribcage. J.B. was instructed by OFFICER DEFENDANTS and DEPUTY  
17 DEFENDANTS to sit next to his mother. J.B. obeyed this direction.

18       31. After the paramedics had arrived and as they were taking down the  
19 family's information, paramedics asked JONATHAN whether he had been shot. It  
20 was at this time that JONATHAN realized that he had been shot twice in the right  
21 forearm, once in his left hand, and once on his right leg.

22       32. At all relevant times, Plaintiff ANABELLE was present and observed  
23 her father, mother, and brother sustain serious gunshot injuries.

24       33. Plaintiffs TANJA and J.B. were subsequently airlifted to the hospital  
25 due to their serious injuries.

26       34. Plaintiff JONATHAN was ultimately transported to the hospital via  
27 ambulance for his gunshot injuries.

28

1  
2                   **FIRST CLAIM FOR RELIEF**

3                   **Fourth Amendment—Excessive Force (42 U.S.C. § 1983)**

4 (Plaintiffs JONATHAN, TANJA, and J.B. against OFFICER DEFENDANTS and  
5                   DEPUTY DEFENDANTS)

6       35. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1  
7 through 34 of this Complaint with the same force and effect as if fully set forth  
8 herein.

9       36. OFFICER DEFENDANTS and DEPUTY DEFENDANTS, while  
10 working as law enforcement officers for CHP and SBSD, respectively, and acting  
11 within the course and scope of their duties, intentionally shot at PUGA while he was  
12 between them and the BOTTON RESIDENCE and used excessive and unreasonable  
13 force against him in an effort to detain him. Upon information and belief, PUGA did  
14 not pose an immediate threat of serious injury or death at the time of the shooting  
15 and the number of shots was excessive. OFFICER DEFENDANTS and DEPUTY  
16 DEFENDANTS had no legal justification for using deadly force against PUGA and  
17 their use of deadly force while carrying out their duties as police officers was an  
18 unreasonable and non-privileged use of force.

19       37. OFFICER DEFENDANTS and DEPUTY DEFENDANTS  
20 intentionally used deadly force against PUGA, which resulted in serious gunshot  
21 injuries to Plaintiffs JONATHAN, TANJA, and J.B. Some of the gunshots  
22 OFFICER DEFENDANTS and DEPUTY DEFENDANTS intentionally fired at  
23 PUGA struck Plaintiffs JONATHAN, TANJA, and J.B.

24       38. When OFFICER DEFENDANTS and DEPUTY DEFENDANTS  
25 intentionally used deadly force against PUGA, they were aware that PUGA was  
26 between them and the BOTTON RESIDENCE, and they were aware that the  
27 BOTTON RESIDENCE was in the background when they fired gunshots in  
28 PUGA's direction. OFFICER DEFENDANTS and DEPUTY DEFENDANTS knew

1 or reasonably should have known that there were innocent bystanders inside of the  
2 BOTTEN RESIDENCE and that their gunshots could strike the BOTTEN  
3 RESIDENCE and anyone inside the BOTTEN RESIDENCE. OFFICER  
4 DEFENDANTS and DEPUTY DEFENDANTS thus fired their weapons with the  
5 knowledge that innocent bystanders, including Plaintiffs, could be struck by their  
6 bullets.

7       39. By intentionally and unreasonably using deadly force that struck and  
8 injured Plaintiffs JONATHAN, TANJA, and J.B., OFFICER DEFENDANTS and  
9 DEPUTY DEFENDANTS deprived them of their right to be secure in their persons  
10 against unreasonable searches and seizures as guaranteed to them under the Fourth  
11 Amendment to the United States Constitution and applied to state actors by the  
12 Fourteenth Amendment.

13       40. When OFFICER DEFENDANTS and DEPUTY DEFENDANTS  
14 intentionally fired shots that struck the BOTTEN RESIDENCE, Plaintiffs  
15 JONATHAN, TANJA, and J.B. were aware OFFICER DEFENDANTS and  
16 DEPUTY DEFENDANTS were shooting with the intent to seize PUGA and that  
17 they were not free to leave the BOTTEN RESIDENCE.

18       41. Based on these circumstances, and due to the shots that struck the  
19 BOTTEN RESIDENCE and Plaintiffs JONATHAN, TANJA, and J.B., Plaintiffs  
20 were not free to leave the premises of their home and in fact remained on the  
21 premises. The deadly force used by OFFICER DEFENDANTS and DEPUTY  
22 DEFENDANTS terminated Plaintiffs' freedom of movement and unreasonably  
23 seized them within the meaning of the Fourth Amendment.

24       42. As a direct and proximate result of the conduct of OFFICER  
25 DEFENDANTS and DEPUTY DEFENDANTS, Plaintiffs JONATHAN, TANJA,  
26 and J.B. sustained serious physical injuries and emotional distress. As a result of  
27 their injuries, JONATHAN and TANJA were unable to work for a period of time.  
28 As a result of his injuries, J.B. was unable to attend school for a period of time.

1       43. As a result of their misconduct, OFFICER DEFENDANTS and  
2 DEPUTY DEFENDANTS are liable for JONATHAN, TANJA, and J.B.'s injuries,  
3 either because they were integral participants in the use of excessive force, and/or  
4 because they failed to intervene to prevent these violations.

5       44. The conduct of OFFICER DEFENDANTS and DEPUTY  
6 DEFENDANTS was malicious, wanton, oppressive, and accomplished with  
7 conscious disregard for the rights and safety of others, entitling JONATHAN,  
8 TANJA, and J.B. to an award of exemplary and punitive damages as to OFFICER  
9 DEFENDANTS and DEPUTY DEFENDANTS.

10       45. Plaintiffs JONATHAN, TANJA, and J.B. seek compensatory damages,  
11 punitive damages, and attorney's fees under this claim.

## **SECOND CLAIM FOR RELIEF**

## **Substantive Due Process (42 U.S.C. § 1983)**

15 (Plaintiffs JONATHAN, TANJA, and J.B. against OFFICER DEFENDANTS and  
16 DEPUTY DEFENDANTS)

17       46. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1  
18 through 45 of this Complaint with the same force and effect as if fully set forth  
19 herein.

20       47. Plaintiffs JONATHAN, TANJA, and J.B. had a cognizable interest  
21 under the Due Process Clause of the Fourteenth Amendment of the United States  
22 Constitution to be free from state actions that deprive them of life, liberty, or  
23 property in such a manner as to shock the conscience, including but not limited to  
24 arbitrary and/or oppressive exercises of government power that violate the decencies  
25 of civilized conduct.

26       48. When OFFICER DEFENDANTS and DEPUTY DEFENDANTS fired  
27 their weapons in PUGA's direction, striking PUGA as well as Plaintiffs  
28 JONATHAN, TANJA, and J.B., they did so during an extended encounter with

1 PUGA during which PUGA presented no imminent threat of death or serious bodily  
2 injury.

3        49. Given the absence of a need to use deadly force at any point  
4 whatsoever, let alone at the particular moments at which OFFICER DEFENDANTS  
5 and DEPUTY DEFENDANTS fired their weapons, OFFICER DEFENDANTS and  
6 DEPUTY DEFENDANTS had the opportunity to deliberate before deciding to fire  
7 their weapons in the direction of PUGA and the BOTTEN RESIDENCE. At the  
8 time the shots were fired, OFFICER DEFENDANTS and DEPUTY  
9 DEFENDANTS were not facing an escalating situation requiring them to make any  
10 snap judgments regarding whether or when to use deadly force.

11       50. By firing their weapons in PUGA’s direction in the absence of any  
12 imminent threat of death or serious bodily harm, without legal justification, and in  
13 reckless or conscious disregard of the likelihood that their shots would strike the  
14 BOTTEN RESIDENCE—which was visible to OFFICER DEFENDANTS and  
15 DEPUTY DEFENDANTS when they fired their weapons—or its occupants,  
16 OFFICER DEFENDANTS and DEPUTY DEFENDANTS demonstrated deliberate  
17 indifference toward the constitutional rights, safety, and bodily integrity of Plaintiffs  
18 JONATHAN, TANJA, and J.B.

19       51. As a direct and proximate result of these actions, Plaintiffs  
20 JONATHAN, TANJA, and J.B. sustained serious physical injuries and emotional  
21 distress. As a result of their injuries, JONATHAN and TANJA were unable to work  
22 for a period of time. As a result of his injuries, J.B. was unable to attend school for a  
23 period of time.

24       52. Plaintiffs JONATHAN, TANJA, and J.B. seek compensatory damages,  
25 punitive damages, and attorney's fees under this claim.

### **THIRD CLAIM FOR RELIEF**

## **Municipal Liability—Inadequate Training (42 U.S.C. § 1983)**

1 (Plaintiffs JONATHAN, TANJA, and J.B. against Defendants COUNTY and DOES  
2 9-10)

3       53. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1  
4 through 52 of this Complaint with the same force and effect as if fully set forth  
5 herein.

6       54. DEPUTY DEFENDANTS acted under color of law.

7       55. The acts of DEPUTY DEFENDANTS deprived Plaintiffs  
8 JONATHAN, TANJA, and J.B. of their particular rights under the United States  
9 Constitution.

10      56. The training policies of Defendant COUNTY were not adequate to  
11 train its officers to handle the usual and recurring situations with which they must  
12 deal. Specifically, Defendant COUNTY's training policies were not adequate to  
13 train its deputies to avoid excessive uses of force. Defendant COUNTY's training  
14 policies were not adequate to train the deputies to properly use nonlethal and lethal  
15 force in the event that such force was warranted. The officers were not trained in the  
16 proper use of equipment they carried with them.

17      57. Defendant COUNTY was deliberately indifferent to the obvious  
18 consequences of its failure to train its deputies adequately.

19      58. The failure of Defendant COUNTY to provide adequate training,  
20 including training with regards to detention, use of deadly force, and the use of force  
21 caused the deprivation of Plaintiffs JONATHAN, TANJA, and J.B.'s rights by  
22 DEPUTY DEFENDANTS; that is, Defendant COUNTY's failure to train is so  
23 closely related to the deprivation of Plaintiffs JONATHAN, TANJA, and J.B.'s  
24 rights as to be the moving force that caused the ultimate injury.

25      59. On information and belief, COUNTY failed to train DEPUTY  
26 DEFENDANTS properly and adequately.

27  
28

1       60. The following are only a few examples of the continued misconduct by  
2 deputies working for the COUNTY, which indicates the COUNTY's failure to  
3 properly train its sheriff's deputies:

- 4           a. In *Estate of Merlin Factor v. County of San Bernardino*, case no.  
5 5:14-cv-01289-DMG-AGR(x), C.D. Cal., Plaintiffs argued that the use  
6 of deadly force against the unarmed Merlin Factor was unreasonable.  
7 The police reports showed that Mr. Factor was unarmed, and the parties  
8 settled the case for a high six-figure settlement.
- 9           b. In *Young v. County of San Bernardino*, case no. 5:15-CV-01102-  
10 JGB-SP, C.D. Cal., Plaintiff argued that the 2014 shooting of Keivon  
11 Young was excessive and unreasonable. In 2016, a jury agreed and  
12 awarded a high six-figure verdict in Plaintiff's favor.
- 13           c. In *Salazar v. County of San Bernardino*, case no. 5:16-cv-01103-  
14 JWH-KK, C.D. Cal., the COUNTY settled with the family of a man  
15 who died as a result of excessive force while being restrained by  
16 COUNTY deputies for \$999,999.99. The COUNTY ratified the  
17 deputies' conduct, found the detention use of restraint to be "within  
18 policy," and failed to reprimand, retrain, or otherwise penalize the  
19 deputies for their conduct.
- 20           d. In *Archibald v. County of San Bernardino*, case no. 5:16-cv-  
21 01128, C.D. Cal., the plaintiffs, the parents of a 29-year-old mentally ill  
22 unarmed man who was shot and killed by a deputy working for the  
23 COUNTY, argued that the deputy detained and arrested the decedent  
24 without reasonable suspicion and probable cause and used excessive  
25 force, including deadly force, in the unlawful detention and arrest of  
26 decedent. The jury returned a \$33.5 million verdict against the  
27 COUNTY and deputy and found for the plaintiffs on all claims. The  
28 COUNTY ratified the deputy's conduct, found the detention and

1 shooting to be “within policy,” and failed to reprimand, retrain, or  
2 otherwise penalize the deputy for his conduct. The COUNTY  
3 negligently retained the deputy following this shooting, which resulted  
4 in a subsequent shooting by the same deputy of another unarmed man,  
5 for which the COUNTY settled with the victim prior to any litigation.

6 e. In *Ranero v. County of San Bernardino*, case no. 5:16-cv-02655,  
7 C.D. Cal., the COUNTY settled with a man involved in a non-fatal  
8 police shooting that resulted in serious injuries including the loss of use  
9 of the victim’s left leg. The COUNTY ratified the deputies’ conduct,  
10 found the shooting to be “within policy,” and failed to reprimand,  
11 retrain, or otherwise penalize the deputies for their conduct.

12 f. In *Phillips v. County of San Bernardino*, case no. 5:18-cv-02532,  
13 C.D. Cal., the COUNTY settled for \$2.1 million with the family of a  
14 woman who was shot and killed by a deputy working for the COUNTY  
15 while driving in her vehicle despite not posing an immediate threat of  
16 death or serious bodily injury to the deputy or anyone else at the time  
17 of the shooting.

18 g. In *Ramos v. County of San Bernardino*, case no. 5:19-cv-01023-  
19 JGB-SP, C.D. Cal., a jury returned a verdict of \$4.5 million against the  
20 COUNTY and involved deputy for the shooting death of a man who the  
21 jury found posed no immediate threat of death or serious bodily injury  
22 to anyone as he was shot in the back while running away. The  
23 COUNTY ratified the deputies’ conduct, found the shooting to be  
24 “within policy,” and failed to reprimand, retrain, or otherwise penalize  
25 the deputies for their conduct.

26 h. In *Allen v. County of San Bernardino*, case nos. 5:20-cv-00283-  
27 JFW-SHK, 5:20-cv-00589 JFW-SHK, 8:20-cv-00567-JFW-SHK, C.D.  
28 Cal., the COUNTY settled for \$1.6 million with the family of a man

1 who was shot and killed by deputies working for COUNTY without  
2 warning, despite posing no immediate threat of death or serious bodily  
3 injury. The COUNTY ratified the deputies' conduct, found the shooting  
4 to be "within policy," and failed to reprimand, retrain, or otherwise  
5 penalize the deputies for their conduct.

6 i. In *Alvarado v. County of San Bernardino*, case no. 5:20-cv-  
7 00592-DMG-SHK, C.D. Cal., plaintiffs argued that the County  
8 Correctional Deputies failed to provide medical and mental health care  
9 to Perla Alvarado, who was in their custody in the West Valley  
10 Detention Center. The failure to provide medical care resulted in her  
11 death. The parties recently settled for an undisclosed amount.

12 j. In *Brown v. County of San Bernardino*, case no. 5:20-cv-01658,  
13 C.D. Cal., Plaintiffs alleged that San Bernardino County Sheriff's  
14 Deputies used excessive and unreasonable force when they shot him  
15 several times and when he never threatened any person with a weapon  
16 or vehicle. In 2021, the parties settled the case for a high six-figure  
17 settlement. Upon information and belief, no deputy was retrained,  
18 provided additional training, disciplined, suspended, or terminated as a  
19 result of this settlement.

20 k. In *Yepez v. County of San Bernardino*, case no. 5:21-cv-00123-  
21 JGB-SHK, C.D. Cal., the COUNTY settled for \$815,000 with a man  
22 who was savagely beaten and tased by three deputies while he was  
23 lying on the ground, complying with commands, and with nothing in  
24 either hand. The COUNTY ratified the deputies' conduct, found the  
25 shooting to be "within policy," and failed to reprimand, retrain, or  
26 otherwise penalize the deputies for their conduct.

27 l. In *Arrona v. County of San Bernardino*, case no. 5:21-cv-00389-  
28 DSF-KK, C.D. Cal., plaintiffs argued that the involved San Bernardino

1 County Sheriff's Deputies used excessive physical and less-lethal force  
2 against plaintiffs in their home. The case recently settled for an  
3 undisclosed amount.

4 m. Numerous prior incidents at County of San Bernardino detention  
5 centers also support Plaintiffs' claims for Municipal Liability in this  
6 case. For example, between 2014 and 2016, thirty-three County  
7 inmates filed lawsuits alleging torture by COUNTY and its deputies  
8 involving violations of 42 U.S.C. § 1983. (Case No. 5:15-cv-02515-  
9 JGB-DTB.) Johnny Alcala and 14 other inmates sued COUNTY, and  
10 David Smith filed his own lawsuit, (Case No. 5:15-cv-02513-JGB-  
11 DTB), going back to years of torture by COUNTY correctional  
12 officers. Moreover, the ACLU also brought a class action lawsuit  
13 alleging unconstitutional practice of LGBT inmates at COUNTY's  
14 West Valley Detention Center ("WVDC"). (Case No. 14-2171-JGB-  
15 SP.) The ACLU's lawsuit addressed the trouble of WVDC in denying  
16 services in unconstitutional manner, including failure to make safety  
17 checks as mandated by Title 15, and the suit represented approximately  
18 600 individuals.

19 61. By reason of the aforementioned acts and omissions, Plaintiffs  
20 JONATHAN, TANJA, and J.B. sustained serious physical injuries and emotional  
21 distress. As a result of their injuries, JONATHAN and TANJA were unable to work  
22 for a period of time. As a result of his injuries, J.B. was unable to attend school for a  
23 period of time.

24 62. Accordingly, Defendants COUNTY and DOES 9-10 each are liable to  
25 Plaintiffs JONATHAN, TANJA, and J.B. for compensatory damages under 42  
26 U.S.C. § 1983. Plaintiffs JONATHAN, TANJA, and J.B. also seek attorney's fees  
27 under this claim.

28

1  
2                   **FOURTH CLAIM FOR RELIEF**

3                   **Municipal Liability—Unconstitutional Custom, Practice, or Policy**

4                   **(42 U.S.C. § 1983)**

5 (Plaintiffs JONATHAN, TANJA, and J.B. against Defendants COUNTY and DOES  
6                   9-10)

7         63. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1  
8 through 62 of this Complaint with the same force and effect as if fully set forth  
9 herein.

10       64. DEPUTY DEFENDANTS acted pursuant to an expressly adopted  
11 official policy or a longstanding practice or custom of the Defendant COUNTY.

12       65. On information and belief, DEPUTY DEFENDANTS were not  
13 disciplined, reprimanded, retrained, suspended, or otherwise penalized in connection  
14 with their shooting of PUGA and Plaintiffs JONATHAN, TANJA, and J.B.

15       66. Defendants COUNTY, DEPUTY DEFENDANTS, and DOES 9-10,  
16 together with other COUNTY policymakers and supervisors, maintained, inter alia,  
17 the following unconstitutional customs, practices, and policies:

- 18                   (a) Using excessive force, including excessive deadly force;
- 19                   (b) Providing inadequate training regarding the use of deadly force;
- 20                   (c) Employing and retaining as sheriff's deputies individuals such as  
21                   DEPUTY DEFENDANTS, whom Defendant COUNTY at all  
22                   times material herein knew or reasonably should have known  
23                   had dangerous propensities for abusing their authority and for  
24                   using excessive force;
- 25                   (d) Inadequately supervising, training, controlling, assigning, and  
26                   disciplining COUNTY deputies, and other personnel, including  
27                   DEPUTY DEFENDANTS, whom Defendant COUNTY knew or

1                   in the exercise of reasonable care should have known had the  
2                   aforementioned propensities and character traits;

- 3                   (e) Maintaining grossly inadequate procedures for reporting,  
4                   supervising, investigating, reviewing, disciplining and  
5                   controlling misconduct by COUNTY sheriff's deputies,  
6                   including DEPUTY DEFENDANTS;
- 7                   (f) Failing to adequately discipline COUNTY sheriff's deputies,  
8                   including DEPUTY DEFENDANTS, for the above-referenced  
9                   categories of misconduct, including "slaps on the wrist,"  
10                  discipline that is so slight as to be out of proportion to the  
11                  magnitude of the misconduct, and other inadequate discipline  
12                  that is tantamount to encouraging misconduct;
- 13                  (g) Announcing that unjustified shootings are "within policy,"  
14                  including shootings that were later determined in court to be  
15                  unconstitutional;
- 16                  (h) Even where shootings are determined in court to be  
17                  unconstitutional, refusing to discipline, terminate, or retrain the  
18                  deputies involved;
- 19                  (i) Maintaining a policy of inaction and an attitude of indifference  
20                  towards soaring numbers of police shootings, including by  
21                  failing to discipline, retrain, investigate, terminate, and  
22                  recommend for criminal prosecution deputies who participate in  
23                  unjustified shootings;
- 24                  (j) Failing to properly train sheriff's deputies to use nonlethal force  
25                  and to maintain their equipment concerning nonlethal force,  
26                  including Tasers, in working condition.

1       67. The following are only a few examples of the continued misconduct by  
2 deputies working for the COUNTY, which indicates the COUNTY maintains  
3 unconstitutional customs, practices, and/or policies:

- 4           a. In *Estate of Merlin Factor v. County of San Bernardino*, case no.  
5 5:14-cv-01289-DMG-AGR(x), C.D. Cal., Plaintiffs argued that the use  
6 of deadly force against the unarmed Merlin Factor was unreasonable.  
7 The police reports showed that Mr. Factor was unarmed, and the parties  
8 settled the case for a high six-figure settlement.
- 9           b. In *Young v. County of San Bernardino*, case no. 5:15-CV-01102-  
10 JGB-SP, C.D. Cal., Plaintiff argued that the 2014 shooting of Keivon  
11 Young was excessive and unreasonable. In 2016, a jury agreed and  
12 awarded a high six-figure verdict in Plaintiff's favor.
- 13           c. In *Salazar v. County of San Bernardino*, case no. 5:16-cv-01103-  
14 JWH-KK, C.D. Cal., the COUNTY settled with the family of a man  
15 who died as a result of excessive force while being restrained by  
16 COUNTY deputies for \$999,999.99. The COUNTY ratified the  
17 deputies' conduct, found the detention use of restraint to be "within  
18 policy," and failed to reprimand, retrain, or otherwise penalize the  
19 deputies for their conduct.
- 20           d. In *Archibald v. County of San Bernardino*, case no. 5:16-cv-  
21 01128, C.D. Cal., the plaintiffs, the parents of a 29-year-old mentally ill  
22 unarmed man who was shot and killed by a deputy working for the  
23 COUNTY, argued that the deputy detained and arrested the decedent  
24 without reasonable suspicion and probable cause and used excessive  
25 force, including deadly force, in the unlawful detention and arrest of  
26 decedent. The jury returned a \$33.5 million verdict against the  
27 COUNTY and deputy and found for the plaintiffs on all claims. The  
28 COUNTY ratified the deputy's conduct, found the detention and

1 shooting to be “within policy,” and failed to reprimand, retrain, or  
2 otherwise penalize the deputy for his conduct. The COUNTY  
3 negligently retained the deputy following this shooting, which resulted  
4 in a subsequent shooting by the same deputy of another unarmed man,  
5 for which the COUNTY settled with the victim prior to any litigation.

6 e. In *Ranero v. County of San Bernardino*, case no. 5:16-cv-02655,  
7 C.D. Cal., the COUNTY settled with a man involved in a non-fatal  
8 police shooting that resulted in serious injuries including the loss of use  
9 of the victim’s left leg. The COUNTY ratified the deputies’ conduct,  
10 found the shooting to be “within policy,” and failed to reprimand,  
11 retrain, or otherwise penalize the deputies for their conduct.

12 f. In *Phillips v. County of San Bernardino*, case no. 5:18-cv-02532,  
13 C.D. Cal., the COUNTY settled for \$2.1 million with the family of a  
14 woman who was shot and killed by a deputy working for the COUNTY  
15 while driving in her vehicle despite not posing an immediate threat of  
16 death or serious bodily injury to the deputy or anyone else at the time  
17 of the shooting.

18 g. In *Ramos v. County of San Bernardino*, case no. 5:19-cv-01023-  
19 JGB-SP, C.D. Cal., a jury returned a verdict of \$4.5 million against the  
20 COUNTY and involved deputy for the shooting death of a man who the  
21 jury found posed no immediate threat of death or serious bodily injury  
22 to anyone as he was shot in the back while running away. The  
23 COUNTY ratified the deputies’ conduct, found the shooting to be  
24 “within policy,” and failed to reprimand, retrain, or otherwise penalize  
25 the deputies for their conduct.

26 h. In *Allen v. County of San Bernardino*, case nos. 5:20-cv-00283-  
27 JFW-SHK, 5:20-cv-00589 JFW-SHK, 8:20-cv-00567-JFW-SHK, C.D.  
28 Cal., the COUNTY settled for \$1.6 million with the family of a man

1 who was shot and killed by deputies working for COUNTY without  
2 warning, despite posing no immediate threat of death or serious bodily  
3 injury. The COUNTY ratified the deputies' conduct, found the shooting  
4 to be "within policy," and failed to reprimand, retrain, or otherwise  
5 penalize the deputies for their conduct.

6 i. In *Alvarado v. County of San Bernardino*, case no. 5:20-cv-  
7 00592-DMG-SHK, C.D. Cal., plaintiffs argued that the County  
8 Correctional Deputies failed to provide medical and mental health care  
9 to Perla Alvarado, who was in their custody in the West Valley  
10 Detention Center. The failure to provide medical care resulted in her  
11 death. The parties recently settled for an undisclosed amount.

12 j. In *Brown v. County of San Bernardino*, case no. 5:20-cv-01658,  
13 C.D. Cal., Plaintiffs alleged that San Bernardino County Sheriff's  
14 Deputies used excessive and unreasonable force when they shot him  
15 several times and when he never threatened any person with a weapon  
16 or vehicle. In 2021, the parties settled the case for a high six-figure  
17 settlement. Upon information and belief, no deputy was retrained,  
18 provided additional training, disciplined, suspended, or terminated as a  
19 result of this settlement.

20 k. In *Yepez v. County of San Bernardino*, case no. 5:21-cv-00123-  
21 JGB-SHK, C.D. Cal., the COUNTY settled for \$815,000 with a man  
22 who was savagely beaten and tased by three deputies while he was  
23 lying on the ground, complying with commands, and with nothing in  
24 either hand. The COUNTY ratified the deputies' conduct, found the  
25 shooting to be "within policy," and failed to reprimand, retrain, or  
26 otherwise penalize the deputies for their conduct.

27 l. In *Arrona v. County of San Bernardino*, case no. 5:21-cv-00389-  
28 DSF-KK, C.D. Cal., plaintiffs argued that the involved San Bernardino

1 County Sheriff's Deputies used excessive physical and less-lethal force  
2 against plaintiffs in their home. The case recently settled for an  
3 undisclosed amount.

4 m. Numerous prior incidents at County of San Bernardino detention  
5 centers also support Plaintiffs' claims for Municipal Liability in this  
6 case. For example, between 2014 and 2016, thirty-three County  
7 inmates filed lawsuits alleging torture by COUNTY and its deputies  
8 involving violations of 42 U.S.C. § 1983. (Case No. 5:15-cv-02515-  
9 JGB-DTB.) Johnny Alcala and 14 other inmates sued COUNTY, and  
10 David Smith filed his own lawsuit, (Case No. 5:15-cv-02513-JGB-  
11 DTB), going back to years of torture by COUNTY correctional  
12 officers. Moreover, the ACLU also brought a class action lawsuit  
13 alleging unconstitutional practice of LGBT inmates at COUNTY's  
14 West Valley Detention Center ("WVDC"). (Case No. 14-2171-JGB-  
15 SP.) The ACLU's lawsuit addressed the trouble of WVDC in denying  
16 services in unconstitutional manner, including failure to make safety  
17 checks as mandated by Title 15, and the suit represented approximately  
18 600 individuals.

19 68. Defendants COUNTY, DEPUTY DEFENDANTS, and DOES 9-10,  
20 together with various other officials, whether named or unnamed, had either actual  
21 or constructive knowledge of the deficient policies, practices and customs alleged in  
22 the paragraphs above. Despite having knowledge as stated above, these defendants  
23 condoned, tolerated, and through actions and inactions thereby ratified such policies.  
24 Said defendants also acted with deliberate indifference to the foreseeable effects and  
25 consequences of these policies with respect to the constitutional rights of Plaintiffs  
26 JONATHAN, TANJA, J.B., and other individuals similarly situated.

27 69. By perpetrating, sanctioning, tolerating, and ratifying the outrageous  
28 conduct and other wrongful acts, DEPUTY DEFENDANTS and DOES 9-10 acted

1 with intentional, reckless, and callous disregard for Plaintiffs JONATHAN, TANJA,  
2 J.B.'s constitutional rights. Furthermore, the policies, practices, and customs  
3 implemented, maintained, and still tolerated by Defendants COUNTY, DEPUTY  
4 DEFENDANTS, and DOES 9-10 were affirmatively linked to and were a  
5 significantly influential force behind the injuries of Plaintiffs JONATHAN, TANJA,  
6 J.B.

7       70. By reason of the aforementioned acts and omissions, Plaintiffs  
8 JONATHAN, TANJA, and J.B. sustained serious physical injuries and emotional  
9 distress. As a result of their injuries, JONATHAN and TANJA were unable to work  
10 for a period of time. As a result of his injuries, J.B. was unable to attend school for a  
11 period of time.

12       71. Accordingly, Defendants COUNTY and DOES 9-10 each are liable to  
13 Plaintiffs JONATHAN, TANJA, and J.B. for compensatory damages under 42  
14 U.S.C. § 1983. Plaintiffs JONATHAN, TANJA, and J.B. also seek attorney's fees  
15 under this claim.

## **FIFTH CLAIM FOR RELIEF**

## Battery

(Plaintiffs JONATHAN, TANJA, and J.B. against all Defendants)

20       72. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1  
21 through 71 of this Complaint with the same force and effect as if fully set forth  
22 herein.

23        73. OFFICER DEFENDANTS and DEPUTY DEFENDANTS, while  
24 working as law enforcement officers for CHP and SBSD, respectively, and acting  
25 within the course and scope of their duties, intentionally shot at PUGA while he was  
26 between them and the BOTTEN RESIDENCE and used excessive and unreasonable  
27 force against him. Upon information and belief, PUGA did not pose an immediate  
28 threat of serious injury or death at the time of the shooting and the number of shots

1 was excessive. OFFICER DEFENDANTS and DEPUTY DEFENDANTS had no  
2 legal justification for using deadly force against PUGA and their use of deadly force  
3 while carrying out their duties as police officers was an unreasonable and non-  
4 privileged use of force.

5       74. When OFFICER DEFENDANTS and DEPUTY DEFENDANTS  
6 intentionally used deadly force against PUGA, they also used deadly force against  
7 Plaintiffs JONATHAN, TANJA, and J.B. Some of the gunshots OFFICER  
8 DEFENDANTS and DEPUTY DEFENDANTS intentionally fired struck Plaintiffs  
9 JONATHAN, TANJA, and J.B.

10       75. When OFFICER DEFENDANTS and DEPUTY DEFENDANTS  
11 intentionally used deadly force against PUGA, they were aware that PUGA was  
12 between them and the BOTTON RESIDENCE, and they were aware that the  
13 BOTTON RESIDENCE was in the background when they fired gunshots in  
14 PUGA's direction. OFFICER DEFENDANTS and DEPUTY DEFENDANTS knew  
15 or reasonably should have known that there were innocent bystanders inside of the  
16 BOTTON RESIDENCE. OFFICER DEFENDANTS and DEPUTY DEFENDANTS  
17 thus fired their weapons with the knowledge that innocent bystanders, including  
18 Plaintiffs, could be struck by their bullets.

19       76. As a direct and proximate result of the conduct of OFFICER  
20 DEFENDANTS and DEPUTY DEFENDANTS, Plaintiffs JONATHAN, TANJA,  
21 and J.B. sustained serious physical injuries and emotional distress. As a result of  
22 their injuries, JONATHAN and TANJA were unable to work for a period of time.  
23 As a result of his injuries, J.B. was unable to attend school for a period of time.

24       77. Defendant STATE is vicariously liable for the wrongful acts of  
25 OFFICER DEFENDANTS, pursuant to section 815.2(a) of the California  
26 Government Code, which provides that a public entity is liable for the injuries  
27 caused by its employees within the scope of the employment if the employee's act  
28 would subject him or her to liability.

78. Defendant COUNTY is vicariously liable for the wrongful acts of DEPUTY DEFENDANTS, pursuant to section 815.2(a) of the California Government Code, which provides that a public entity is liable for the injuries caused by its employees within the scope of the employment if the employee's act would subject him or her to liability.

6        79. The conduct of OFFICER DEFENDANTS and DEPUTY  
7 DEFENDANTS was malicious, wanton, oppressive, and accomplished with  
8 conscious disregard for the rights and safety of others, entitling JONATHAN,  
9 TANJA, and J.B. to an award of exemplary and punitive damages as to OFFICER  
10 DEFENDANTS and DEPUTY DEFENDANTS.

11       80. Plaintiffs JONATHAN, TANJA, and J.B. seek compensatory and  
12 punitive damages under this claim.

## SIXTH CLAIM FOR RELIEF

## Negligence

(Plaintiffs JONATHAN, TANJA, and J.B. against all Defendants)

17       81. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1  
18 through 80 of this Complaint with the same force and effect as if fully set forth  
19 herein.

20        82. Police officers, including OFFICER DEFENDANTS and DEPUTY  
21 DEFENDANTS, have a duty to use reasonable care to prevent harm or injury to  
22 others. This duty includes using appropriate tactics, giving appropriate commands,  
23 giving warnings, and not using any force unless necessary, not using more force  
24 than necessary, using less than lethal options, and only using deadly force as a last  
25 resort.

26       83. OFFICER DEFENDANTS and DEPUTY DEFENDANTS breached  
27 this duty of care. Upon information and belief, the actions and inactions of

1 OFFICER DEFENDANTS and DEPUTY DEFENDANTS were negligent and  
2 reckless, including but not limited to:

- 3 (a) the failure to properly and adequately assess the need to use  
4 force or deadly force against PUGA;
- 5 (b) the negligent tactics and handling of the situation with PUGA,  
6 including pre-shooting negligence, failure to deescalate,  
7 escalating the encounter, and failure to give a deadly force  
8 warning prior to the use of deadly force;
- 9 (c) the negligent use of force, including deadly force, against  
10 PUGA;
- 11 (d) the failure to properly and adequately assess their shooting  
12 background prior to their use of deadly force against PUGA;
- 13 (e) shooting indiscriminately and shooting an excessive number of  
14 times;

15 84. As a direct and proximate result of the conduct of OFFICER  
16 DEFENDANTS and DEPUTY DEFENDANTS, Plaintiffs JONATHAN, TANJA,  
17 and J.B. sustained serious physical injuries and emotional distress. As a result of  
18 their injuries, JONATHAN and TANJA were unable to work for a period of time.  
19 As a result of his injuries, J.B. was unable to attend school for a period of time.

20 85. Defendant STATE is vicariously liable for the wrongful acts of  
21 OFFICER DEFENDANTS, pursuant to section 815.2(a) of the California  
22 Government Code, which provides that a public entity is liable for the injuries  
23 caused by its employees within the scope of the employment if the employee's act  
24 would subject him or her to liability.

25 86. Defendant COUNTY is vicariously liable for the wrongful acts of  
26 DEPUTY DEFENDANTS, pursuant to section 815.2(a) of the California  
27 Government Code, which provides that a public entity is liable for the injuries  
28

1 caused by its employees within the scope of the employment if the employee's act  
2 would subject him or her to liability.

3       87. Plaintiffs JONATHAN, TANJA, and J.B. seek compensatory damages  
4 under this claim.

## **SEVENTH CLAIM FOR RELIEF**

## **Negligence – Bystander (Negligent Infliction of Emotional Distress)**

(All Plaintiffs against all Defendants)

9       88. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1  
10 through 87 of this Complaint with the same force and effect as if fully set forth  
11 herein.

12        89. Plaintiffs JONATHAN is the husband of Plaintiff TANJA and the  
13 father of Plaintiffs ANNABELLE and J.B. Plaintiff TANJA is the wife of Plaintiff  
14 JONATHAN and the mother of Plaintiffs ANNABELLE and J.B. Plaintiffs  
15 ANNABELLE and J.B. are siblings. At all relevant times, Plaintiffs were close  
16 familial members all living together within the same household.

17       90. Plaintiffs JONATHAN, TANJA, ANNABELLE, and J.B. were present  
18 and observed the shooting of JONATHAN, TANJA, and J.B. Plaintiffs  
19 JONATHAN, TANJA, ANNABELLE, and J.B. were contemporaneously aware that  
20 JONATHAN, TANJA, and J.B. were being injured at the time OFFICER  
21 DEFENDANTS and DEPUTY DEFENDANTS intentionally used deadly force  
22 against PUGA and also shot JONATHAN, TANJA, and J.B. Plaintiffs  
23 JONATHAN, TANJA, ANNABELLE, and J.B. observed and perceived their family  
24 members being shot by OFFICER DEFENDANTS and DEPUTY DEFENDANTS  
25 and were aware that JONATHAN, TANJA, and J.B. were injured after OFFICER  
26 DEFENDANTS' and DEPUTY DEFENDANTS' use of deadly force.

27        91. OFFICER DEFENDANTS, while working as police officers for  
28 STATE and while acting within the course and scope of their duties, negligently and

1 carelessly inflicted emotional distress on Plaintiffs JONATHAN, TANJA,  
2 ANNABELLE, and J.B. when they shot and injured JONATHAN, TANJA, and  
3 BOTTON JR in front of the Plaintiffs.

4       92. DEPUTY DEFENDANTS, while working as sheriff's deputies for  
5 COUNTY and while acting within the course and scope of their duties, negligently  
6 and carelessly inflicted emotional distress on Plaintiffs JONATHAN, TANJA,  
7 ANNABELLE, and J.B. when they shot and injured JONATHAN, TANJA, and  
8 BOTTON JR in front of the Plaintiffs.

9       93. As a result of their misconduct, OFFICER DEFENDANTS and  
10 DEPUTY DEFENDANTS are liable for Plaintiffs JONATHAN, TANJA,  
11 ANNABELLE, and J.B.'s injuries when they shot and injured JONATHAN,  
12 TANJA, and J.B. in front of the Plaintiffs, either because they were integral  
13 participants in the use of excessive force, and/or because they failed to intervene to  
14 prevent these violations.

15      94. As a direct and proximate result of OFFICER DEFENDANTS and  
16 DEPUTY DEFENDANTS' conduct as alleged above, Plaintiffs JONATHAN,  
17 TANJA, ANNABELLE, and J.B. were caused to suffer severe emotional distress,  
18 including but not limited to suffering, anguish, fright, horror, nervousness, grief,  
19 anxiety, worry, shock, humiliation, and shame.

20      95. Defendant STATE is vicariously liable for the wrongful acts of  
21 OFFICER DEFENDANTS, pursuant to section 815.2(a) of the California  
22 Government Code, which provides that a public entity is liable for the injuries  
23 caused by its employees within the scope of the employment if the employee's act  
24 would subject him or her to liability.

25      96. Defendant COUNTY is vicariously liable for the wrongful acts of  
26 DEPUTY DEFENDANTS, pursuant to section 815.2(a) of the California  
27 Government Code, which provides that a public entity is liable for the injuries  
28

1 caused by its employees within the scope of the employment if the employee's act  
2 would subject him or her to liability.

3       97. Plaintiffs JONATHAN, TANJA, ANNABELLE, and J.B. bring this  
4 claim in their individual capacity and seek compensatory damages.

## **EIGHTH CLAIM FOR RELIEF**

## **Violation of Cal. Civil Code § 52.1**

8 (Plaintiffs JONATHAN, TANJA, and J.B. against all Defendants)

9       98. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1  
10 through 98 of this Complaint with the same force and effect as if fully set forth  
11 herein.

12        99. California Civil Code, Section 52.1 (the Bane Act), prohibits any  
13 person from using violent acts or threatening to commit violent acts in retaliation  
14 against another person for exercising that person's constitutional rights.

15        100. OFFICER DEFENDANTS and DEPUTY DEFENDANTS, while  
16 working as law enforcement officers for STATE and COUNTY, respectively, and  
17 acting within the course and scope of their duties, intentionally committed and  
18 attempted to commit acts of violence, including by repeatedly firing their weapons  
19 in PUGA's direction while he was between them and the BOTTON RESIDENCE  
20 and using excessive and unreasonable force against him. Upon information and  
21 belief, PUGA did not pose an immediate threat of serious injury or death at the time  
22 of the shooting and the number of shots was excessive. OFFICER DEFENDANTS  
23 and DEPUTY DEFENDANTS had no legal justification for using deadly force  
24 against PUGA and their use of deadly force while carrying out their duties as police  
25 officers was an unreasonable and non-privileged use of force.

26 101. When OFFICER DEFENDANTS and DEPUTY DEFENDANTS  
27 intentionally used deadly force by firing in PUGA's direction, they used deadly  
28 force against Plaintiffs JONATHAN, TANJA, and J.B. Some of the gunshots

1 OFFICER DEFENDANTS and DEPUTY DEFENDANTS intentionally fired in  
2 PUGA's direction struck Plaintiffs JONATHAN, TANJA, and J.B. instead.

3       102. When OFFICER DEFENDANTS and DEPUTY DEFENDANTS  
4 intentionally used deadly force, they were aware that PUGA was between them and  
5 the BOTTON RESIDENCE, and they were aware that the BOTTON RESIDENCE  
6 was in the background when they fired gunshots in PUGA's direction. OFFICER  
7 DEFENDANTS and DEPUTY DEFENDANTS knew or reasonably should have  
8 known that there were innocent bystanders inside of the BOTTON RESIDENCE.  
9 OFFICER DEFENDANTS and DEPUTY DEFENDANTS thus fired their weapons  
10 with the knowledge that innocent bystanders, including Plaintiffs, could be struck by  
11 their bullets.

12       103. By intentionally firing their weapons in PUGA's direction without any  
13 legal justification or excuse while aware innocent bystanders like Plaintiffs could be  
14 struck by their bullets, and by intentionally using deadly force that in fact seriously  
15 injured Plaintiffs JONATHAN, TANJA, and J.B., OFFICER DEFENDANTS and  
16 DEPUTY DEFENDANTS acted in reckless disregard of PUGA's as well as  
17 JONATHAN, TANJA, and J.B.'s civil rights.

18       When OFFICER DEFENDANTS and DEPUTY DEFENDANTS shot  
19 repeatedly in PUGA's direction and thereby struck PUGA and Plaintiffs  
20 JONATHAN, TANJA, and J.B., they deliberately subjected PUGA and Plaintiffs  
21 JONATHAN, TANJA, and J.B. to excessive force that was beyond what was  
22 necessary. By doing so, either by integrally participating in these actions or by  
23 failing to intervene, OFFICER DEFENDANTS and DEPUTY DEFENDANTS  
24 coercively interfered with PUGA's and Plaintiffs JONATHAN, TANJA, and J.B.'s  
25 civil rights to be free from unreasonable searches and seizures, to due process, and  
26 to be free from state actions that shock the conscience.

27       104. On information and belief, OFFICER DEFENDANTS and DEPUTY  
28 DEFENDANTS intentionally and spitefully coercively committed the above acts to

1 coercively interference with PUGA's civil rights, to discourage PUGA from  
2 exercising his civil rights, to retaliate against him for invoking such rights, or to  
3 prevent him from exercising such rights, which he was fully entitled to enjoy. In  
4 doing so while aware of the risks that their actions posed to Plaintiffs JONATHAN,  
5 TANJA, and J.B., OFFICER DEFENDANTS and DEPUTY DEFENDANTS  
6 demonstrated reckless indifference to the substantial likelihood that their conduct  
7 would have the same effect on Plaintiffs JONATHAN, TANJA, and J.B.

8       105. Plaintiffs JONATHAN, TANJA, and J.B. reasonably believed and  
9 understood that the violent acts committed by OFFICER DEFENDANTS and  
10 DEPUTY DEFENDANTS were done with reckless indifference to the substantial  
11 likelihood that OFFICER DEFENDANTS' and DEPUTY DEFENDANTS' conduct  
12 would coercively interfere with Plaintiffs JONATHAN, TANJA, and J.B.'s civil  
13 rights, would discourage them from exercising the above civil rights, and/or would  
14 prevent them from exercising such rights.

15       106. OFFICER DEFENDANTS and DEPUTY DEFENDANTS successfully  
16 interfered with the above civil rights of PUGA, as well as of Plaintiffs JONATHAN,  
17 TANJA, and J.B.

18       107. The conduct of Defendants was a substantial factor in causing Plaintiffs  
19 JONATHAN, TANJA, and J.B.'s harms, losses, injuries, and damages.

20       108. STATE is vicariously liable for the wrongful acts of OFFICER  
21 DEFENDANTS pursuant to section 815.2(a) of the California Government Code,  
22 which provides that a public entity is liable for the injuries caused by its employees  
23 within the scope of the employment if the employee's act would subject him or her  
24 to liability.

25       109. Defendants DOES 7-8 are vicariously liable under California law and  
26 the doctrine of *respondeat superior*.

27       110. COUNTY is vicariously liable for the wrongful acts of DEPUTY  
28 DEFENDANTS pursuant to section 815.2(a) of the California Government Code,

1 which provides that a public entity is liable for the injuries caused by its employees  
2 within the scope of the employment if the employee's act would subject him or her  
3 to liability.

4       111. Defendants DOES 9-10 are vicariously liable under California law and  
5 the doctrine of *respondeat superior*.

6       112. The conduct of Defendants was malicious, wanton, oppressive, and  
7 accomplished with a conscious disregard for Plaintiffs JONATHAN, TANJA, and  
8 J.B.'s rights, justifying an award of exemplary and punitive damages as to  
9 OFFICER DEFENDANTS and DEPUTY DEFENDANTS.

10      113. Plaintiffs JONATHAN, TANJA, and J.B. seek compensatory damages,  
11 treble damages, attorney's fees, and costs under this claim.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

## **PRAAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs JONATHAN WAYNE BOTTEN, SR., TANJA  
3 DUDEK-BOTTEN, ANNABELLE BOTTEN, and J.B., a minor, by and through his  
4 guardian JONATHAN WAYNE BOTTEN, SR., request entry of judgment in their  
5 favor and against Defendants STATE OF CALIFORNIA, COUNTY OF SAN  
6 BERNARDINO, ISAIAH KEE, MICHAEL BLACKWOOD, BERNARDO  
7 RUBALCAVA, ROBERT VACCARI, JAKE ADAMS, and DOES 1-10 as follows:

- A. For compensatory damages in whatever other amount may be proven at trial;
  - B. For medical expenses and loss of earnings;
  - C. For punitive damages against the individual defendants in an amount to be proven at trial;
  - D. For statutory damages;
  - E. For treble damages pursuant to California Civil Code Sections 52, 52.1;
  - F. For interest;
  - G. For reasonable attorneys' fees, including litigation expenses;
  - H. For costs of suit; and
  - I. For such further other relief as the Court may deem just, proper, and appropriate.

22 | DATED: February 17, 2023

## LAW OFFICES OF DALE K. GALIPO

By \_\_\_\_\_ /s/ *Dale K. Galipo*  
Dale K. Galipo  
Hang Le  
Attorneys for Plaintiffs

1                   **DEMAND FOR JURY TRIAL**

2                   Plaintiffs hereby demand a trial by jury.

3

4 DATED: February 17, 2023           LAW OFFICES OF DALE K. GALIPO

5

6

7                   Bv /s/ Dale K. Galipo

8                   Dale K. Galipo

9                   Hang Le

10                  Attorneys for Plaintiffs

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28